

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0220, In re Juvenile 2004-0220-A: In re Juvenile 2004-0220-B, the court on June 7, 2005, issued the following order:

The mother of the juveniles in Case No. 2004-0220-A and 2004-0220-B appeals an order of the probate court terminating her parental rights. She contends that the evidence did not support the probate court's findings that she failed to correct conditions of neglect and that termination of her parental rights was in the best interests of the children. We affirm.

We will not disturb the probate court's decree in a termination of parental rights case unless it is unsupported by the evidence or plainly erroneous as a matter of law. In re Antonio W., 147 N.H. 408, 412 (2002). The trial court is in the best position to assess and weigh the evidence because it has the benefit of observing the parties and their witnesses; we therefore do not consider whether we might have found differently but rather whether a reasonable person could have found as the trial court did. See In re Craig T., 144 N.H. 584, 585 (1999).

The record in this case reveals that the mother was found to have neglected the children in June 2001; the children were placed in foster care in June 2002. The older child has significant psychological issues resulting from physical abuse from her father as an infant, sexual abuse by a baby sitter when six years old and subsequent threats of physical violence from the mother's live-in boyfriend. The younger child, born in 1998, has an IEP, and has been in therapy since 2001, exhibiting aggressive behavior. By the time of her removal from the home at the age of three, she had been found on two separate occasions wandering unsupervised around the apartment complex.

The probate court found that although the mother had made some effort "to keep her children," the effort was "too little too late." The court found that she had failed to participate actively in individual therapy, shown little interest in her children's therapy, missed school meetings, failed to maintain safe and suitable housing and married a convicted felon. The record supports these findings. While it is true that the mother attended some meetings, scheduled either for herself or for the children, she also missed many. Given the inconsistency of her attempts and the needs of her children, we cannot say that the trial court erred in finding that she had failed to correct the conditions of neglect. This is not a case arising due solely to so-called disadvantaged circumstances, see In re Robert H., 118 N.H. 713 (1978); rather the evidence indicates that the older child had been neglected and both physically and

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sexually abused and the younger child neglected in such a way as to put her physical safety in jeopardy prior to her removal from the mother's care. The State spent several years making services available to the mother to assist her in correcting the conditions yet she failed to do so.

The record also supports the probate court's determination that termination of the mother's rights was in the best interests of the children. At the time of the termination hearing, the children had been in the same foster home for over a year and their behaviors had improved markedly. The older child had improved in both school performance and attendance, demonstrating a significant talent in art. Her therapist testified that she needed a home environment that provided her with safety and no domestic violence or abuse and that consistently provided for her needs for food, clothing and shelter. The younger child had not developed as strong a bond with her mother, had made significant progress in her foster home, and had the same needs for a safe and stable home environment. We therefore find no error in the trial court's ruling.

Affirmed.

NADEAU, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**

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